



## State of New Hampshire

### PUBLIC EMPLOYEE LABOR RELATIONS BOARD

EDUCATIONAL SUPPORT PERSONNEL ASSOCIATION  
OF PORTSMOUTH, NEA-NEW HAMPSHIRE

Complainant

CASE NO. M-0561:1

v.

DECISION NO. 84-84

PORTSMOUTH SCHOOL BOARD

Respondent

#### APPEARANCES

Representing Educational Support Personnel Association  
of Portsmouth, NEA-New Hampshire

Jo Campbell

Shirley Curtis

Jessie Johnson

Representing Portsmouth School Board

Richard C. Pecunies

William Hartwell

#### BACKGROUND

On May 17, 1984 the Educational Support Personnel Association of Portsmouth (ESPAP), NEA-New Hampshire, brought unfair labor practice charges against the Portsmouth School Board, alleging violation of RSA 273-A:5, I (a) and (g).

The ESPAP stated that it began negotiations with the School Board's representative on March 13, 1984 and held the initial session after work hours; the ESPAP requested a series of meetings but the School Board negotiator preferred to arrange the meetings one at a time. During subsequent discussions the ESPAP suggested meeting times, some of which were during work hours. The School Board found that the during-work-hours meetings were not convenient. In arranging for the fifth meeting the ESPAP representative pressed for a morning meeting due to schedule conflicts at other times. The School Board representative asserted that it was "Board policy" not to negotiate with employees during work hours. The ESPAP charges that this refusal to meet during any work hours is contrary to RSA 273-A:5, I, (a) "to restrain, coerce or otherwise interfere with its employees in the exercise of the rights conferred by this chapter"; and (g) "to fail to comply with this chapter on any rule adopted hereunder".

The School Board replied that its representative had always tried to be cooperative, that many sessions were held and were "positive and productive".

The School Board pointed out that all meetings were mutually agreed upon, as provided in their ground rules, and that past practice was that negotiating meetings were always held after working hours (except the custodians whose working hours occupy all of the working hours of any work day); and that this practice was necessitated by the vital nature of the work of the clerks/personnel and was not in violation of RSA 273-A.

A hearing was held at PELRB's offices in Concord, N.H. on September 20, 1984, with all parties represented.

#### FINDINGS OF FACT AND RULINGS OF LAW

At hearing the testimony and exhibits established the following facts:

- (1) The parties had met several times with good results but beginning on May 3rd, due to ESPAP negotiator's schedule, arranging for subsequent meetings became more and more difficult since Board's negotiator would not meet during work hours which might have stalled meetings for about a month;
- (2) School Board negotiator refused to meet during any (even one hour) of work time, claiming this to be "Board policy" which later turned out simply to be past practice;
- (3) Both parties agreed that the clerical personnel were important to the smooth functioning of the schools but also agreed that if they were not there (out sick, for instance) someone would "cover" for them routinely;
- (4) All negotiating times were "mutually agreed to" but within the understanding that the School Board would not meet during working hours.

The question before PELRB is whether or not the obligation to bargain, as established by RSA 273-A:3, I, i.e., "good faith" negotiation involves meeting at reasonable times and places in an effort to reach agreement (emphasis added) requires that possibly some of these meetings take place during normal working hours? We hold that it does. When meetings between two parties are subject to a "mutually agreed" upon process, neither party has the ability to exclude whole blocks of times or places; since such behavior is unreasonable, given efforts by both sides to find a mutually accomodating time (and place) in busy schedules.

#### DECISION

- (1) The PELRB finds the Portsmouth School Board and its negotiator guilty of unfair labor practices as prohibited by RSA 273-A:5, I (a), (g) and (e); and
- (2) we order the Portsmouth School Board to discuss and arrange meeting times (and places) with ESPAP even if such necessitates that meetings will occur during normal working hours; and

(3)

- (3) we order both parties to report progress to PELRB within ten (10) working days of the issuance of this order.

*Robert E. Craig*

ROBERT E. CRAIG, Chairman

Signed this 21st day of November, 1984.

By unanimous vote. Robert E. Craig, Chairman presiding. Members Russell Hilliard, Seymour Osman and Richard Roulx present and voting. Also present, Evelyn C. LeBrun Executive Director.